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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 366th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 27 April 1999, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5)

Initial report of the former Yugoslav Republic of Macedonia (CAT/C/28/Add.4; HRI/CORE/1/Add.83)

1. At the invitation of the Chairman, Mr. Petreski, Mr. Celevski, Mrs. Lazarova-Trajkovska, Mr. Micev, Mr. Pendarovski, Mrs. Stefanovska-Sekovsa, Ms. Gorgieva, Ms. Janjic and Mr. Todorov (former Yugoslav Republic of Macedonia) took places at the Committee table.

2. The CHAIRMAN invited the delegation of the former Yugoslav Republic of Macedonia to introduce its initial report.

3. Mr. PETRESKI (former Yugoslav Republic of Macedonia) said that his country had acceded to the Convention against Torture by succession and was committed to honouring the obligations undertaken by the former Socialist Federal Republic of Yugoslavia. That commitment meant that the former Yugoslav Republic of Macedonia also honoured the declarations made by that regime with regard to articles 21 and 22 of the Convention, thus recognizing the competence of the Committee to examine communications submitted by other States or by individuals and demonstrating its attachment to transparency and respect for human rights.

4. The former Yugoslav Republic of Macedonia approached the implementation of the Convention from an entirely different standpoint from that of the State which it had succeeded. It had opted for a system of genuine parliamentary democracy which respected human rights, the primacy of law and a market economy. The establishment of democracy had entailed a difficult period of transition during which government institutions had been reformed from the ground up. It had been necessary to review all legislation, which had had a profound impact on the status and implementation of such human rights instruments as the Convention against Torture. During that period, the former Yugoslav Republic of Macedonia had strived to achieve observance, promotion and protection of individual rights, not only by reforming the national legislation, but also by drawing on the principles of international law: in addition to the Convention against Torture (and in particular articles 21 and 22), it had ratified the Optional Protocol to the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Moreover, the National Assembly was preparing to recognize the competence of the Committee on the Elimination of Racial Discrimination to consider communications submitted by citizens of the former Yugoslav Republic of Macedonia.

5. Those profound transformations had taken place in an extremely unstable regional context and in spite of serious economic difficulties which inevitably had an effect on the results achieved. The Committee should bear in mind that the tragedy of Kosovo had had a disastrous impact on the stability of the former Yugoslav Republic of Macedonia, as well as on its economic and political prospects. That country was the innocent victim of an economic, social and humanitarian catastrophe.

6. His country's initial report covered the period from 1991 to 1998. Like all initial reports, it emphasized the institutional and legal framework, but it also presented all available information concerning the implementation of the terms of the Convention. The transformation process under way was extremely dynamic and intense. In accordance with the new constitutional objectives, and within the context of the reform of the legal framework and the reorganization of the Ministry of Internal Affairs, two sets of by-laws had been adopted in 1998, one related to the activities of the Ministry and the other comprising instructions on the use of force. Those rules had been formulated on the basis of relevant international standards and were of crucial importance in the matter of respect for human rights. In addition to revising national laws and by-laws, his country was also energetically endeavouring to ratify various international instruments that shared the same goals as the Convention against Torture. The National Assembly was preparing to ratify the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the European Convention on the Transfer of Sentenced Persons.

7. Moreover, the former Yugoslav Republic of Macedonia had taken various administrative measures to ensure the implementation of national and international standards for the prevention of torture. Through educational measures, the Ministry of Internal Affairs was doing its utmost to improve the functioning of the police in the matter of respect for human rights. All police officers were required to take an examination demonstrating a sufficient knowledge of rules pertaining to fundamental rights; instructions on that point were regularly communicated to all police stations. More than 2,000 leaflets describing the basic rights of all citizens that the police were obliged to respect would soon be distributed to police officers. The Ministry worked in cooperation with both national and international non-governmental organizations (NGOs), especially in the arrangement of seminars and educational programmes for the police.

8. For its part, the Directorate for Execution of Sanctions of the Ministry of Justice was working to improve conditions in the penal and correctional institutions. Educating prison personnel was considered a priority: 10-day training programmes had been launched with a view to improving relations between prisoners and staff, and bilateral relations had been established among a number of prison administrations so that information could be exchanged. An independent State commission responsible for supervising the implementation of the Law on Execution of Criminal Sanctions was in the process of being formed. In addition, several prison infrastructure reconstruction projects had been successfully completed, which deserved attention considering the limited resources available to the former Yugoslav Republic of Macedonia. The Ministry of Justice had organized several seminars on the implementation of the relevant international conventions in cooperation with other national and international bodies; the most recent, dealing with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, had led to the formulation of a bulletin that was distributed to all penal and correctional institutions as well as to prisoners themselves; that bulletin described the confidential procedures by which prisoners could contact the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In 1998, a delegation from that committee had visited the former Yugoslav Republic of Macedonia and had

prepared a report containing a number of recommendations, observations and considerations regarding the implementation by that country of international rules on torture prevention: the competent governmental institutions had closely examined that report and planned closely to study its observations and to implement its recommendations.

9. The former Yugoslav Republic of Macedonia was well aware that in the forthcoming period it must place particular emphasis on the implementation of the rules it had undertaken to respect. The authorities were committed to raising awareness about human rights: to that end, it was holding many seminars, round tables and study days, and was widely distributing the texts of international human rights conventions. On the occasion of the fiftieth anniversary of the United Nations, a collection of basic United Nations documents, including the International Bill of Human Rights, had been published in Macedonian as well as in the languages of various ethnic minorities. A collection of documents from the Organization for Security and Cooperation in Europe (OSCE) had also been issued, and in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, the six fundamental United Nations human rights instruments had been published; a similar compendium containing Council of Europe human rights instruments was being prepared. In addition, the study of human rights would henceforth be an integral component of all school curricula, both primary and secondary. Those numerous education and information programmes had shown tangible results: citizens of the former Yugoslav Republic of Macedonia were in the process of learning to make use of the protection measures available to them, including undertaking judicial procedures, applying to the Ombudsman, or seeking remedies before the European Court of Human Rights.

10. Finally, he stressed that, despite the extremely difficult current situation in the Balkans, his country's democratic institutions had managed to make human rights an ongoing priority, as confirmed by most reports prepared by the competent international agencies. The formulation and implementation of an official policy of promotion and protection of human rights was a genuine concern both in the national and the international spheres. Cooperation with international experts within the framework of ongoing follow-up mechanisms, taking into consideration the specific characteristics of each State, was of particular importance to the Government of the former Yugoslav Republic of Macedonia; its dialogue with the Committee constituted an excellent example.

11. Mr. YAKOVLEV (Country Rapporteur) thanked the delegation for having submitted such a comprehensive and detailed report, which demonstrated the efforts undertaken by the Government to implement the Convention. He was especially pleased that it had not only ratified the Convention, but had also reaffirmed the declarations made by its predecessor concerning articles 21 and 22: in the view of the Committee, that was a crucial matter.

12. He was likewise satisfied that article 11 of the Constitution expressly forbade all forms of torture or inhuman or degrading treatment or punishment, a principle that was reflected in article 142 of the Criminal Code, which defined them as criminal offences: there were too many countries that had not yet enshrined those principles in law. Other very positive developments in the country were the creation of the office of Ombudsman, the establishment of

a State commission responsible for monitoring penal institutions, and participation by its nationals in international seminars on the prevention of torture, held in 1996 and 1998.

13. The report nevertheless called for some clarifications. First, it was well understood that the practice of torture was rooted in the fact that officials whose role was to arrest and detain persons sometimes used force, which by definition opened the way to possible abuse: for that reason, in a democracy it was essential that criminal procedures should specifically protect individuals from such abuses and provide for investigations when they occurred. It was therefore crucial for the Committee to know at exactly what moment in the process a suspect was permitted to be assisted by counsel, or, in other words, whether there was a period during which the detained person could be held incommunicado. What authority decided whether the detainee could meet with counsel? Could the interview be conducted confidentially, without investigators being present? Furthermore, were there rules establishing a detainee's right to inform his family of his situation and to be examined by a doctor?

14. The report furnished very useful statistics regarding disciplinary measures taken against officials who had committed abuses; it would also be useful to know whether statistics existed regarding the application of article 142 of the Criminal Code.

15. One of the most effective guarantees for the prevention of torture was the rule declaring confessions obtained by force to be inadmissible. Was there a rule in force which established that any evidence obtained by torture was inadmissible? Was there an independent body responsible for investigating complaints of torture, and did the law make provision for victims of such acts to be compensated?

16. Allegations had reached the Committee regarding abuses committed by the police against members of the Roma community: information on those allegations, as well as on any measures taken to prevent and punish such abuses, would be appreciated. In a multi-ethnic society, measures must be taken to further understanding among ethnic groups.

17. The CHAIRMAN, speaking as Alternate Rapporteur associated himself with the praise expressed by Mr. Yakovlev. It was indeed remarkable that only one NGO had communicated observations on the initial report of the former Yugoslav Republic of Macedonia, which demonstrated that those organizations as a group held the view that the State party was striving to defend the values they propounded. Also impressive were the institutional protections that country had established, among them the institution of Ombudsman and the State commission responsible for monitoring the penal institutions. It was also noteworthy that a State party that had acceded to the Convention by succession had entered no reservations in respect of articles 20, 21 and 22.

18. The report nevertheless called for clarifications. He would first like to ascertain whether the definition of torture contained in the Convention was reflected in its entirety in the domestic legislation: a part of it did appear in article 142 of the Criminal Code, which penalized any person who employed force, threat, or some other unallowed facility or unallowed means

with the intention of extorting a confession or some other statement. However, the definition set out in the Convention was much broader, in that it also covered abuses committed for other reasons, such as, for example, discrimination. It would therefore be useful to know whether the Convention appeared in its entirety in the domestic legislation, and where. The Committee would also like to know whether the courts had universal jurisdiction in torture cases and whether they could try an individual alleged to have committed acts of torture against victims of other nationalities abroad.

19. In 1998, the Human Rights Committee had expressed concern over the excessive use of force by the police of the former Yugoslav Republic of Macedonia, especially toward Roma: had the authorities initiated an investigation into those allegations and, if so, with what results? It seemed, moreover, that in accordance with a traditional practice, the police invited the public to attend and to participate in the interrogation of suspects; it would be useful to know whether that practice persisted, and whether it was a cause of concern for the authorities.

20. Paragraph 155 of the report indicated that an accused person had the right to have legal assistance assigned to him in any case where the interest of justice so required. It would be interesting to know what that apparent limitation on the right to legal aid consisted in. The last sentence of that paragraph specified that an accused person was entitled to be present during the examination of witnesses: did that refer to examinations conducted during the investigation hearings or at the trial itself?

21. He was pleased to learn that school curricula included familiarization with human rights: that was a praiseworthy initiative that other countries should emulate.

22. He would like to know whether the penal institutions cited in paragraph 160 of the report housed convicted persons, or whether they were in some other kind of institution.

23. It would also be useful to know whether the judicial system made provisions for a remedy of the habeas corpus type and whether the last sentence of paragraph 160, which stated that the decision of the Directorate for Execution of Sanctions was final and that the concerned person had the right to judicial protection against it, meant that, after having exhausted his remedies before an administrative body of final instance, he still had the possibility of bringing his case before a court.

24. With regard to compensation, he would like to know whether, in the judicial system of the former Yugoslav Republic of Macedonia, the courts were empowered to impose punishments and to award damages to a victim within the context of a public action or whether the victim was obliged to bring a civil action against the perpetrator of the offence in order to obtain them. In that regard, it would be useful to know whether the State party had a compensation fund for victims of criminal offences, which was the most common mechanism for the payment of compensation.

25. With regard to the implementation of article 15, he was surprised by the wording of paragraph 168 of the report, which quite failed to clarify the question of the admissibility of confessions obtained under torture. The delegation should clarify that matter. If such confessions were admissible, it should explain how that could be reconciled with its obligations under article 15. Furthermore, with regard to the law of evidence, he wondered whether a weapon discovered as a result of confessions obtained under torture could serve as proof in a proceeding, if, for instance, it bore fingerprints that served to identify the perpetrator of the offence.

26. He would also like the delegation to specify which provision of the Criminal Code or of any other domestic legal text set forth a definition of the offences of cruel, inhuman or degrading treatment or punishment as distinct from torture.

27. Mr. SØRENSEN said that, as a physician, he was glad to learn that the large delegation included a doctor; in that regard, he observed that the training of law enforcement personnel under article 10 of the Convention concerned not only civil or military personnel but also medical personnel. The report made no mentioned of that matter. Yet the training of medical personnel was essential, especially in view of the need to provide psychological support to victims; that was a pertinent question, in view of the current flow of refugees into the former Yugoslav Republic of Macedonia. He would also like to know whether the matter of the prohibition of torture was regularly taught in basic medical courses, and whether students specializing in psychiatry and psychology learned how to treat torture victims.

28. It should be emphasized that the three fundamental elements of article 14 were redress, compensation and rehabilitation. Although the report described the legal measures under which an individual could obtain compensation, it failed specifically to describe the implementation of those three elements; additional information would be welcome.

29. He was pleased that the State party had commemorated the fiftieth anniversary of the Universal Declaration of Human Rights. He hoped that it would also mark the International Day in Support of Victims of Torture on 26 June, and that it would, in view of the current situation and despite its financial problems, contemplate making a contribution, however token, to the United Nations Voluntary Fund for Victims of Torture.

30. Mr. MAVROMMATIS requested the State party to include in its next report specific examples of decisions handed down by the courts in order to illustrate how it was fulfilling its obligations. Paragraph 7 of the report indicated that all legislation that was adopted must be harmonized with the Constitution. In that regard, he observed that constitutions, both old and new, protected human rights only to a certain extent, but that none prohibited going beyond its provisions to ensure the protection of human rights. In any event, a constitutional provision would not be invoked in contravention of the Constitution - for example, to justify the death penalty.

31. As for the institution of Ombudsman, mentioned in paragraph 18 of the report, he would like clarifications with regard to the agencies or

organizations whose decisions could be appealed against to the Ombudsman, since the text suggested that even decisions taken by private organizations could be contested before that authority. Turning to the definition of torture, he said that the problem in his view went far beyond the extraction of confessions and sometimes involved discrimination, as indicated by the earlier question about the Romas. In that regard, he had been surprised to find that the report mentioned only one of the criteria for non-discrimination.

32. He would also like further information on the specific measures that had been taken to prevent torture, as well as on such matters as the rights to inform the family, to have access to medical care and, above all, to be assisted by counsel.

33. He regretted that an essential facet of the Convention - distinguishing it from the Geneva Conventions, which permitted exceptions - had been omitted from the report: the fact that article 3 categorically forbade States parties from expelling, returning or extraditing a person to another State where he ran the risk of being tortured. States parties were obliged to determine, before sending someone to another country, whether a risk of torture existed in that country.

34. Paragraph 64 of the report asserted that extradition was not permitted if a foreign citizen enjoyed the right to asylum in the former Yugoslav Republic of Macedonia or if it was a matter of a political or military criminal offence. The perpetrators of acts of torture could perhaps benefit from that rule; clarifications were therefore essential in order to ascertain whether it was compatible with the State party's obligations under the Convention.

35. Mr. EL MASRY asked whether the phrase "or some other unallowed facility or unallowed means" could be taken to mean that allowed means did exist and, if so, what text contained provisions defining those means.

36. He noted that the section of the report concerning article 11 dealt solely with monitoring of the implementation of rules, instructions, methods and practices of interrogation; the aim of that article, however, was that such monitoring should give rise to a comprehensive review of the system.

37. Mr. YU Mengjia asked the delegation to clarify whether a crime committed on orders from a superior, as referred to in paragraph 50, could be considered an act of torture.

38. Mr. GASPAR requested clarification regarding paragraph 44 of the report, which dealt with the role of the State commission responsible for supervision of penal and correctional institutions. He would like to know, in particular, whether there existed an institution like that of a judge, whose role was to monitor the enforcement of sentences and to resolve possible conflicts between detainees and staff in penal institutions. If so, he would like to know the specific powers of such a judge.

39. Paragraphs 72 and 73 of the report indicated that the maximum period of custody was 24 hours. He inquired whether it was obligatory for a judge to

intervene after that period elapsed to rule on the lawfulness of the detention, or whether he asked solely at the request of the detainee.

40. The CHAIRMAN thanked the delegation and invited it to reply to the questions raised by the members of the Committee at the meeting to be held the following day.

41. The delegation of the former Yugoslav Republic of Macedonia withdrew.

The meeting was suspended at 11.20 a.m. and resumed at 11.35 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

42. The CHAIRMAN invited the members of the Committee to volunteer for the role of rapporteur for the six reports to be reviewed at its November session. The reports were selected in the chronological order in which they had been received by the secretariat, namely Malta, Austria, Poland, Finland, Peru and Azerbaijan.

43. Mr. SØRENSEN said that although he understood the rationale for proceeding in chronological order, some States parties were presenting an initial report, whereas others were already at the stage of a third periodic report. He strongly believed that the Committee's first priority must be the establishment of a dialogue with States parties that had not yet appeared before it.

44. The CHAIRMAN said that if the Committee adopted the criterion proposed by Mr. Sørensen, the three initial reports to consider as a matter of priority would be those of Azerbaijan, Kirgyzstan and Uzbekistan.

45. After an exchange of views among Mr. MAVROMMATIS, Mr. GONZALEZ POBLETE, Mr. SØRENSEN, Mr. EL MASRY, Mr. CAMARA and Mr. GASPAR regarding the relative merits of proceeding by chronological order, on the one hand, or giving priority to the consideration of initial reports, on the other, the CHAIRMAN said it was clear that the element of urgency should take precedence over any practice considerations.

46. At the next session, the Committee would therefore consider the reports of Azerbaijan, Kirgyzstan, Uzbekistan, Austria and Malta, with the sixth report being selected at a later meeting. In the light of consultations, he named the following members of the Committee to serve as rapporteurs and alternate rapporteurs for the various reports: Malta - Rapporteur, Mr. Mavrommatis, Alternate Rapporteur, Mr. El Masry; Austria - Rapporteur, Mr. Sørensen, Alternate Rapporteur, Mr. Yakovlev; Azerbaijan - Rapporteur, Mr. Sørensen, Alternate Rapporteur, Mr. Yakovlev; Kirgyzstan - Rapporteur, Mr. Burns, Alternate Rapporteur, Mr. Yu; Uzbekistan - Rapporteur, Mr. Camara, Alternate Rapporteur, Mr. Gaspar.

The meeting rose at noon.